

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

**MEMORANDUM OF LAW & ORDER**  
Criminal File No. 07-359 (MJD/FLN)

(1) DAINE JOSEPH ADAM LINDERMAN,

Defendant.

---

Thomas M. Hollenhorst, Assistant United States Attorney, Counsel for Plaintiff.

Daine Joseph Adam Linderman, pro se.

---

This matter is before the Court on Defendant Daine Joseph Adam Linderman's Motion for Judicial Court Records and Files. [Docket No. 68] Defendant states that, under 28 U.S.C. § 753(b), (f), he seeks transcripts and records in order to initiate a § 2255 proceeding. Specifically, Defendant claims that

defense counsel provided ineffective assistance in allowing the government to breach the plea agreement between the parties, whereas the United States had lied about its communications with the State of Wisconsin who suppose[d]ly guaranteed it would not pursue charges against movant, yet, did so as a result to conceal unlawful police activity in relation to Linderman's arrest and

p[er]jured testimony, which did not come to light until those same officers was arrested and indicted for similar conduct in another case, moreover, the government sought to conceal its deception with former defense counsel Mr. Olson aid by having the court to issue an order of redaction and sealed documents favoring the United States on its agenda and [u]lterior motives.

(Motion at 1-2.)

Defendant seeks the following documents:

1. Docket Entry No. 63 (4/28/09) [Notice of Withdrawal of Statement of Redaction USA as to Daine Joseph Adam Linderman re 60 Transcript]
2. Docket Entry No. 62 (4/19/09) [Statement of Redaction by USA re 60 Transcript]
3. Docket Entry No. 61 (4/19/09) [Notice of Intent to Request Redaction by USA re 60 Transcript]
4. Docket Entry No. 43 (5/21/08) [Plea Agreement Filed with the Clerk]
5. Docket Entry No. 41 (4/3/08) [Sealed Document]
6. Docket Entry No. 39 (4/3/08) [Speedy Trial Act Waiver by Daine Joseph Adam Linderman]
7. Docket Entry No. 38 (4/3/08) [Motion to Exclude Time Under the Speedy Trial Act by Daine Joseph Adam Linderman]
8. Docket Entry No. 36 (2/11/08) [Waiver of Speedy Trial by Daine Joseph Adam Linderman]
9. Docket [E]ntry No. 37 (2/12/08) [Order granting 34 Motion to Continue and excluding time as to Daine Joseph Adam Linderman (1)]

(Motion at 5.) Defendant also asserts that he “should have access to his plea agreement hearing transcript.” (Id.)

The Government has responded by stating that it has no objection to Defendant's request to the extent that the documents requested are publicly available to Defendant. All of the docket numbers listed in Defendant's motion are publicly available, with the exception of the sealed document filed as Docket Number 41. This sealed document has no apparent relation to Defendant's intended § 2255 motion, and Defendant does not have a right to a free copy of this document before he files a § 2255 motion. See, e.g., United States v. Losing, 601 F.2d 351, 351-53 (8th Cir. 1979); United States v. Barnett, 389 F. App'x 575, 575 (8th Cir. 2010). The Court denies without prejudice Defendant's request to receive a copy of Docket Number 41 free of charge.

The Government notes that the transcript of the sentencing hearing is publicly available [Docket No. 60]. However, in Defendant's motion, Defendant states that he should be entitled to a transcript of his May 21, 2008 plea hearing, not his sentencing hearing. No transcript of his plea hearing has yet been prepared.

Defendant's request for free preparation of a transcript of his plea hearing is governed by 28 U.S.C. § 753(f), which provides:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma

pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

Section 753(f) does not apply until after a defendant 1) has filed a habeas corpus petition and 2) has been granted leave to proceed in forma pauperis. See, e.g., Losing, 601 F.2d at 353; Barnett, 389 F. App'x at 575. Here, Defendant has not yet filed a habeas petition; nor has he been granted leave to proceed in forma pauperis. Defendant has failed to satisfy the conditions necessary for production of the transcript at the Government's expense; thus, the Court denies Defendant's request without prejudice as premature. See United States v. Burns, No. 18-CR-0076 (WMW/TNL), 2019 WL 4440093, at \*2 (D. Minn. Sept. 17, 2019). Defendant may move for a transcript of his plea hearing, created at the Government's expense, "after he has filed a non-frivolous . . . habeas corpus petition and has been granted leave to proceed in forma pauperis. Until then, his motion is premature and is denied without prejudice." Id.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

**HEREBY ORDERED:**

Defendant Daine Joseph Adam Linderman's Motion for Judicial Court Records and Files [Docket No. 68] is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. Defendant's request for free preparation of a transcript of his May 21, 2008 change of plea hearing is **DENIED** without prejudice;
2. Defendant's request for a free copy of sealed Docket Number 41 is **DENIED** without prejudice; and
3. Defendant's request for copies of Docket Numbers 36, 37, 38, 39, 43, 61, 62, and 63 is **GRANTED** and the Clerk's Office is directed to mail copies of those documents to Defendant free of charge.

Dated: January 16, 2020

s/ Michael J. Davis

Michael J. Davis

United States District Court